



Arizona Court Reporters Association

7225 West Oakland Street, Chandler, Arizona 85226

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Phone: 480-496-4010

Fax: 480-858-1802

May 15th, 2006

Clerk of the Arizona Supreme Court
1501 West Washington, Suite 402
Phoenix, Arizona 85007

RE: Petition No. R-05-0037 -
Comment on Petition to Amend Various Rules of Procedure Relating to
Verbatim Recordings of Judicial Proceedings

The Arizona Court Reporters Association (ACRA) respectfully submits the following comments regarding Rule Change Petition R-05-0037.

ACRA supports the Petition in the following respects:

- in modernizing language in our court rules;
- in recommending that court reporters must be used to make the official record in grand jury proceedings, capital case proceedings, felony jury trials, initial hearings to determine sexually violent person status, and proceedings on a minor's request for authorization of abortion without parental consent;
- in preserving the statutory requirement that a party can request a court reporter for any proceeding;
- in making the court reporter's record the official record in a proceeding also recorded electronically; and
- in recognizing that a court reporter's record of proceedings is the "gold standard" of record making.

ACRA takes issue with the Petition in several important respects. While we appreciate and support the recommendation of the five case types where court reporters would be required, it does not go far enough. This list should also include civil jury trials, juvenile delinquency hearings, and hearings on contested parental rights termination.

Without inclusion of the above-mentioned case types, there is the very real potential that a party's right to a court reporter will be diminished over time either through pressure from judges who advocate for electronic recording or simply because official reporters will become unavailable as counties reallocate funds from court reporter positions. Litigants who insist on the best record would then be forced to outsource for court reporting services, creating a two-tiered system of justice where the best record is available only to those that can afford it.

We regret that the Keeping the Record Committee ("Committee") did not undertake a systematic study of cost and performance of the competing methods for making the record. ACRA is unaware of any independent financial audit that in any way justifies claims – stated repeatedly to the point of becoming unchallenged fact – that electronic recording saves money for courts or taxpayers. The cost savings claimed by vendors and their proponents are anecdotal at best, unsubstantiated by a thorough, longitudinal financial analysis; and misleading at worst by driving policy decisions that ultimately affect litigants in a negative way.

A thorough review and assessment of Arizona's existing electronic recording systems would have been a logical first step for the Committee. However, in nearly two years of meetings, there was no investigation or inquiry of any kind into the performance of these systems, even when presented with factual examples of blank recordings and error-ridden transcripts. Instead, these problems were dismissed as merely anecdotal. In fact, it came to light during Committee meetings that Maricopa County does not maintain a log documenting failures or any other measure of the performance of its recording system. ACRA has attached to this document a small sampling of the types of problems that have been, and will continue to be, encountered.

We submit that civil jury trials, hearings in juvenile delinquency cases, and hearings on contested parental rights termination should be included within the reporter-required category. These case types involve serious financial matters, the future of young people and the rights of parents to raise their children. These cases require an accurate verbatim record. One of the reasons given by the Committee in keeping reporters the official record maker in its five case types is that these cases typically "involve high transcript volume, and exacting due process standards that argue in favor of maintaining the traditional record-maker." [Petition, page 12] We submit that the above-mentioned three additional types of cases should be included for the same reasons. Due process expectations are as high for the participants in these three types of cases as in the Committee's select five.

The Supreme Court noted in its Administrative Order establishing the Committee that "The availability of an accurate record helps promote public trust in the system by ensuring the public knows what happens in court proceedings and, on appeal, can make the difference in winning or losing your property, your family or even your life." It is significant that two of these three dire results may occur in cases of the kind the Committee eliminated from its list. We submit that the three eliminated case types should therefore be restored to the list.

We appreciate that one of the Committee's goals was to allow for the appropriate allocation of court resources, both financial and staff. This goal is achieved by allowing parties, even in the select five types of cases, to waive the right to a reporter, when necessary or desired, with court approval. The option to waive gives the courts the necessary flexibility to address financial constraints and administrative concerns, but does not diminish the rights of parties to have the most accurate record possible in matters that may mean the loss of property or family.

In its Administrative Order, the Supreme Court acknowledges the valuable role played by court reporters in our judicial system: "certified court reporters are highly trained, valuable professional members of the justice system. Their skills are important to the provision of justice...." The Committee also acknowledged that when accuracy must be guaranteed, court reporters are the default choice. This is made apparent by their requirement of court reporters for its select five types of cases, and by its making the court reporter's record the official record in a proceeding also recorded electronically.

The Supreme Court must insure that litigants' rights to the most accurate record are protected, and ACRA believes that inclusion of the eight case types -- comprising serious evidentiary matters -- in the reporter-required category of the Reporting Resources Proposal is necessary to accomplish this goal.

In the spirit of contributing to what we hope is an ongoing discussion, we submit the following Attachments A through J bearing on the issues before the Supreme Court.

Sincerely,

Michele E. Balmer

Michele E. Balmer. RPR
Certified Reporter No. 50489
President Elect

J. RUSSELL SKELTON

April 27, 2006

Marvin Atwood
Atwood Reporting Service
3030 North Central Avenue, Suite 404
Phoenix, Arizona 85012

Dear Marvin:

This will confirm our recent conversations concerning the availability of court reporters in Maricopa County Superior Court.

Several years ago I tried a case in what was then a relatively new electronic courtroom. I specifically requested a court reporter and at the request of the judge withdrew the request when the judge personally assured me that it was not necessary as the E-courtroom would be able to produce anything and everything that would normally be obtained from a court reporter.

Later, during the trial I needed a daily transcript and made a request from the court personnel. After 5:00 in the evening I received a CD and was told I would have to arrange for a transcriber which was impossible since I needed it for the following morning in trial. I was fortunate enough to locate the judge who went out of his way to ensure that a transcript would be available the following morning, but had I not reached the judge I would not have had a “official” transcript from which to examine additional witnesses.

More recently, within the last two weeks, I requested a court reporter for oral argument on a motion for summary judgment, again, in an E-courtroom. The presiding judge advised us at the outset that a court reporter was “not available” despite our request. He apologized profusely, and stated in open court that the E-courtrooms are oftentimes not provided with court reporters despite his request. He implied this was a common occurrence and noted that E-courtrooms are on the bottom of the totem pole when requesting court reporters.

Please contact me if you have any questions concerning either of these incidents.

Sincerely,



J. Russell Skelton

JRS:ds
cc: The Honorable Larry Winthrop
Court of Appeals

“ATTACHMENT B” – Page 1 of 1

May 10, 2006

To Whom It May Concern:

I am writing to inform you of an incident that occurred regarding a request for a court reporter in approximately May of 2005 in an electronic courtroom on the 4th Floor of the East Court Building in the Maricopa County Superior Court.

I was assigned by the Court Reporter Manager, Ms. Melinda Vollmer, here at the Superior Court, to cover a matter to be heard at 10:00 o'clock in the aforementioned electronic courtroom.

While waiting in the back of the courtroom along with other counsel on various matters, at approximately 9:45, the judge presiding in this courtroom looked up and noticed that I was sitting there.

The judge inquired was I there for the motion that he was currently involved in, and I explained that I was requested for the 10:00 o'clock motion. The judge then inquired if counsel in the back of the courtroom were the attorneys on the 10:00 o'clock matter, and they informed him they were.

He then inquired of counsel who it was that requested the court reporter for the 10:00 o'clock matter, and one of the attorneys present stated it was him. He then inquired of counsel whether he was aware that the proceedings in his courtroom were videotaped and audio recorded, and at the end of the day he could have a CD of his proceedings at a cost of \$20. Counsel advised he was unaware of such.

At this time the judge inquired whether, knowing that information, he was still in need of a court reporter. Counsel informed him that he was not. The judge then looked at me, and excused me from the courtroom.

After this, I left the courtroom and went back into the court's chambers area, where I told this judge's JA what had just occurred, as I was quite disturbed and embarrassed by my rather abrupt dismissal.

The JA then informed me that she had previously informed the attorneys in this matter when they requested a court reporter that there was no need for such as they were assigned an electronic courtroom. The attorney informed her, as related to me, that they still requested the presence of a court reporter.

I then went back to the Managing Court Reporter and informed her of this incident.

This ended the matter.

Submitted this 10th day of May, 2006, by Donald E. Moll,
Certified Reporter, Cert. No. 50347

“ATTACHMENT C” – Page 1 of 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-012906

01/19/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

FILED: 01/24/2006

YVONNE PUGH-BURFORD

RANDALL A HINSCH

v.

ESPERANZA MANOR L L C, et al.

DONN C ALEXANDER

JAMES R BROENING
SHERLE R FLAGGMAN

ORAL ARGUMENT SET

IT IS ORDERED setting this matter for oral argument on **Plaintiff's Motion to Compel and Request for Sanctions and Defendants' Motion for partial Summary Judgment Regarding Negligence Per Se on February 22, 2006 at 8:30 a.m.** in this division.

The proceedings will take place in the Superior Court's new "e-courtroom." A record of the proceedings will be made by videotape and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a videotape or CD of the proceedings for a \$20.00 charge. If a CD or videotape is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the courtroom clerk or bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.**

Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. **To request a transcript call 602-506-7100** and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address and telephone number. **With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's video recording system before requesting a court reporter. If a court reporter is required, the court must**

“ATTACHMENT C” – Page 2 of 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-012906

01/19/2006

receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

IF ANY ISSUES IN THE MOTION RELATE TO DISCOVERY PROBLEMS, COUNSEL SHALL CONFER TO ATTEMPT TO RESOLVE THEIR DIFFERENCES OR TO REDUCE THE AREAS OF DISPUTE. COUNSEL ARE REMINDED THAT THE COURT WILL LIKELY IMPOSE SANCTIONS AGAINST THE LOSING PARTY IN ACCORDANCE WITH RULE 37(a)(4), RULES OF CIVIL PROCEDURE.

IT IS FURTHER ORDERED:

Oral argument shall not exceed five minutes for each side. If extended oral argument is necessary, counsel must so advise the Court no later than four court days prior to the date set for hearing so that oral argument can be rescheduled.

Any motion or stipulation for continuance must be filed with the Court no later than four court days prior to the date set for hearing. After that date, no continuances will be granted except for extraordinary circumstances.

All memoranda and affidavits regarding the motion must be filed and copies lodged with this division no later than four court days prior to the date set for hearing.

Counsel are advised that if the answering memorandum is not timely filed in accordance with the Arizona Rules Of Civil Procedure, oral argument may be vacated and the motion will be ruled upon in accordance with Rule 7.1 (b), A.R.C.P.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
v.)	CR2004-042897 001 SE
)	
CHALCEY de ETT OLIVER,)	
)	
Defendants.)	
)	
_____)	

Phoenix, Arizona
November 15, 2005

BEFORE THE HONORABLE MICHAEL DAVID HINTZE

REPORTER'S EXCERPT OF TRANSCRIPT OF PROCEEDINGS

(RULE 11 HEARING)

MELISSA GONSALVES, RMR, CRR
Certified Court Reporter 50070

(Original)

1 P R O C E E D I N G S

2 IN OPEN COURT:

3 THE COURT: This is the time set for items
4 number 44, 45, 46, 47, 48 and 49.

5 It's CRs 2002-091890, CR2003-033336 -- I'll
6 do it again -- 2003-033336, CR2003-033606, CR2003-037124,
7 CR2003-039027 and CR2004-042897, State of Arizona versus
8 Chalcey de Ett Oliver.

9 MS. WARZYNSKI: Juli Warzynski appearing for
10 Kristin A. Knudson.

11 MR. MESHEL: Charles Meshel on behalf of
12 Ms. Chalcey Oliver.

13 Dr. Ritchie Rosengard is here.

14 We'll call him.

15 THE COURT: Can you just give me your name for
16 the record?

17 THE DEFENDANT: Chalcey de Ett Oliver.

18 THE COURT: Doctor, would you please stand, state
19 your full name and raise your right hand.

20 WITNESS ROSENGARD: Richard J. Rosengard.

21 THE COURT: Dr. Seward.

22 WITNESS SEWARD: James D. Seward.

23 (Richard J. Rosengard and James d. Seward
24 were duly sworn.)

25 THE COURT: Go ahead and take a seat.

1 During these proceedings, we do have a court
2 reporter that was requested by defense counsel. This
3 courtroom is also -- has the ability to do video recording
4 as well for the record, which is the audio recording, so we
5 will have both available to us.

6 With respect to this matter, then, at any
7 point, counsel may choose to not have the court reporter
8 to save costs, if he so chooses. We can rely on the other
9 means.

10 In the meantime, I want to go over the
11 rules. You need to be able to speak into the microphones,
12 when you are speaking. You don't need to hover directly
13 above them but close enough to them, and you need to be at
14 a place, obviously, where the microphone is at. So if you
15 could just remember that, I'd appreciate it.

16 Counsel, do we have any original agreements
17 or any agreements?

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ROBERT J. SCHANTZ,)	
)	
Plaintiff,)	
)	No. CV2000-011458
vs.)	
)	
PHOENIX ORTHOPEDIC GROUP PC,)	
et al.,)	
)	
Defendant.)	

Phoenix, Arizona
October 1, 2002
October 2, 2002

BEFORE THE HONORABLE ROBERT D. MYERS
(Designation of Record)

TRANSCRIPT OF PROCEEDINGS

1 MR. MORRISON: (Indiscernible) comparative fault
2 (indiscernible) in this case, Your Honor. That's what is
3 alleged as a defense. I don't know if you want me to argue
4 it now. I think that issue is plain. I think the medical
5 malpractice --

6 THE COURT: And you said they were a mistake.

7 MR. MORRISON: Well, some of them should not have
8 been in the comparative fault --

9 THE COURT: I will not -- I can tell you in advance
10 you can make a further record if you want. You're making a
11 record right now. I don't think comparative fault is an
12 issue in this case. So I mean, the doctor was either
13 negligent or not. You want to attribute some of the
14 plaintiff's fault to reduce a verdict -- I don't understand.

15 Comparative fault is a defense. It will reduce a
16 verdict if the jury finds the plaintiff to be at fault in
17 part or in whole. How would you possibly think that that
18 would be a benefit to you or your client? It's a defense.
19 Go ahead.

20 MR. MORRISON: (Indiscernible) whether it's a
21 defense or (indiscernible) that my client did some things
22 that Dr. Meislin is claiming (indiscernible) and also
23 conclude that (indiscernible) Dr. Meislin should not have
24 given him, in which case they may attribute fault to
(indiscernible).

22 OCT 68 PM 2:30

IN THE SUPERIOR COURT OF ARIZONA

10 STATE OF ARIZONA,

NO. LC 2001-000378

Appellee,

VS.

TODD CURTIS YASUDA,

MOTION FOR CORRECTION
OF THE RECORD ON APPEAL
OR IN THE ALTERNATIVE,
FOR TRIAL *DE NOVO*

Appellant.

Pursuant to Rules 7 and 8, Superior Court Rules of Appellate Procedure — Crimi

Appellant through undersigned moves for the correction of the Record on Appeal, whether through revised transcription, stipulation by trial court counsel of the issues, or otherwise. If accurate memorialization of what occurred cannot be re-constructed, then Appellant moves for a trial *de novo*, for the following reasons:

The Transcript consists of three volumes and 539 pages. *There are over seven hundred "indiscernibles,"* that is, seven hundred places wherein the transcriptionist cannot adequately report what occurred. ¹ Worse, there are over two dozen instances of "Side Bar Conference

Indeed, between pages 460 and 473, a span of only thirteen pages, undersigned counted 132 instances of "indiscernible." These pages have been attached as representative.

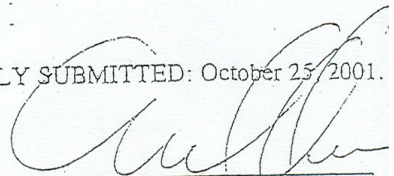
"ATTACHMENT F" – Page 2 of 5

1 Indiscernible," wherein the totality of argument and ruling by the trial court *has been completely*
2 *omitted.*

3 This is preposterous. Under these circumstances no identification and briefing of the legal
4 issues on appeal is possible. Worse, most of the "indiscernibles" center on counsel and the trial
5 court, stiking at the very heart of the Record.
6

7 The court has several options, ranging from ordering an amended or corrected
8 transcription to having trial counsel, if they are willing, prepare a stipulation of the issues and
9 the essential facts. If in fact none of these can be accomplished, then the court's only recourse
10 is to order a trial *de novo*.

11 RESPECTFULLY SUBMITTED: October 25, 2001.

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13 MICHAEL J. DEW
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26 In fact, undersigned physically tallied all of them: Volume One contains 73 instances,
27 Volume Two 220 places, and Volume Three has 420 omissions.
28



City of Phoenix

MUNICIPAL COURT
CIVIL DIVISION

March 13, 2000

Superior Court
Court Administration Office
201 West Jefferson
11th Floor
Phoenix, AZ 85003

RE: Todd Yasuda
Complaint: 5843921-01
LC # 2001-00378

*FTR
equipment
used*

Dear Court Administrator:

Due to recording equipment malfunction in courtroom 702, the court proceedings on the above defendant were recorded improperly. The Phoenix Municipal Court switched its recording system from a tape-based operation to a digital system in 2001. The digital system records the audio from a sound mixer and then the audio is archived on CD's. At the time of the proceedings for the above defendant, the audio mixer was out of adjustment and the audio clarity was affected.

If I can be of any assistance, please contact me at (602) 261-8320.

Sincerely,

Marissa Lilly
Audio Coordinator
300 West Washington, 3rd floor
Phoenix, Arizona 85003

cc: Pros. Office
Appeals
Defendant

300 West Washington Street • Phoenix, Arizona 85003-2103 • 602-262-6421 • FAX 602-534-3626 • TTY 602-495-0733
Revised 8/99

"ATTACHMENT F" – Page 4 of 5

YASUDA - CROSS

460

1 MS. STOLPEN: (Indiscernible).

2 BY MS. STOLPEN:

3 Q: You got your Diazepam filled on (indiscernible) December
4 correct? And the 30th of December; right?

5 MR. DOYLE: Objection, Your Honor. Can we
6 approach?

7 THE COURT: Yes.

8 (Side Bar Conference)

9 MR. DOYLE: I'll renew my motion. This is not
10 (indiscernible).

11 MS. STOLPEN: (Indiscernible).

12 MR. DOYLE: Your Honor, opportunity (indiscernible)
13 to the Court's (indiscernible) violation (indiscernible). If
14 we start to (indiscernible) going back (indiscernible) number
15 of pills (indiscernible) -- I mean if you want
16 (indiscernible).

17 THE COURT: (Indiscernible) the jury's going to
18 (indiscernible).

19 MR. DOYLE: (Indiscernible).

20 THE COURT: (Indiscernible).

21 MS. STOLPEN: (Indiscernible) cross-examination
22 (indiscernible).

23 MR. DOYLE: Your Honor, (indiscernible) on the
24 record that the Court having sustained it all or part
25 (indiscernible) objection (indiscernible) I am not doing this

1 in bad faith.

2 MS. STOLPEN: (Indiscernible).

3 THE COURT: (Indiscernible).

4 MR. DOYLE: (Indiscernible).

5 MS. STOLPEN: (Indiscernible).

6 THE COURT: (Indiscernible) the truth. The truth
7 is is (indiscernible).

8 MS. STOLPEN: (Indiscernible).

9 MR. DOYLE: Judge, (indiscernible) Court allow
10 (indiscernible) use the records to show opportunity to take
11 it (indiscernible) how many prescriptions he was
12 (indiscernible). All it does (indiscernible) prosecution
13 wants to do (indiscernible) for some (indiscernible)
14 prescription drug. That's all they want to do. It doesn't
15 go to his state. (Indiscernible) take the pills, then

16 (indiscernible) prescription (indiscernible).
17 (Indiscernible) don't matter. (Indiscernible). The rest of
18 it is (indiscernible).

19 MS. STOLPEN: (Indiscernible).

20 MR. DOYLE: Judge, they've been admitted but have
21 not been shown to the jury (indiscernible) on these problems
22 we are trying to get records of at least one other
23 (indiscernible) we had some time to talk about it.

24 MS. STOLPEN: (Indiscernible).

25 MR. DOYLE: Then do what you want.

“ATTACHMENT G” – Page 1 of 4
(Transcribed from Audio CD)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	No. CR 1997-013217
)	
NEIL FRANCIS DUDLEY (A),)	
)	
Defendant.)	

Phoenix, Arizona
September 20, 2005

BEFORE: THE HONORABLE COMM. VIRGINIA L. RICHTER

TRANSCRIPT OF PROCEEDINGS

(Disposition Hearing Probation Revoked - Imprisonment)

Phoenix, Arizona
September 20, 2005

P R O C E E D I N G S

(Whereupon, the following proceedings took
place in open court.)

THE COURT: I'm not that concerned about it.
I don't see a reason to bring him back. Is that what you
were told to do? So I'm not inclined to, unless either
counsel wish to.

MS. BERKO: Unless we had it (indiscernible)
in the minute entry.

THE COURT: The minute entry shouldn't be an
issue.

Mr. Bonaguidi, do you have any problem?

MR. BONAGUIDI: With what?

THE COURT: Mr. Dudley's sentencing was
apparently not recorded. There was a glitch with the
recording system during the sentence portion.

MR. BONAGUIDI: Who's Mr. Dudley?

AN UNIDENTIFIED VOICE: (Indiscernible.)

THE COURT: Pardon me.

AN UNIDENTIFIED VOICE: (Indiscernible.)

1 THE COURT: No, you're fine.

2 AN UNIDENTIFIED VOICE: Oh, I'm sorry.

3 THE COURT: Mr. Dudley is the individual with
4 the concurrent sentence in Gila County. Did you want
5 that?

6 MR. BONAGUIDI: Are you kidding me? There's
7 no record of that? Yeah, I have a problem with that.

8 MS. BERKO: It's on the minute entry.

9 MR. BONAGUIDI: That's not going to be on the
10 minute entry. My argument's not going to be on the minute
11 entry.

12 I do -- I have a problem with that, Your
13 Honor, to be frank. Not just my disagreement with the
14 sentence, but just I would like a record --

15 THE COURT: -- of that. Yeah.

16 MS. BERKO: We don't even want to bring
17 him -- I don't think we need to bring him back in if
18 Mr. Bonaguidi just wants to state on the record now what
19 his argument was. I don't have a problem with that. I
20 don't think Mr. Dudley needs to be here.

21 THE COURT: All right. We can waive his
22 presence for that.

23 Is that -- will that be satisfactory?

24 MR. BONAGUIDI: That's fine, your Honor.

25 THE COURT: All right. Recalling

1 CR 1997-013217, State of Arizona versus Neil Francis
2 Dudley.

3 MR. BONAGUIDI: Steve Bonaguidi for Frankie
4 Jones for the State.

5 MS. BERKO: Hilary Berko for Mr. Dudley who
6 is not present, your Honor. And I will waive his
7 appearance for purposes of this hearing.

8 THE COURT: All right. The Court has been
9 informed that the sentencing portion of Mr. Dudley's
10 proceeding was not captured by the recording system and
11 wishes to allow the County Attorney an opportunity to
12 place his arguments on the record.

13 Mr. Bonaguidi.

14 MS. BERKO: Thank you, your Honor.

15 As I stated earlier -- which is apparently
16 not on the record -- the State is greatly concerned with
17 the message we're sending the defendants in this case.

18 What we're telling people is -- is it's okay
19 to commit new crimes while you're on probation, because
20 what you do and you get sentenced on that crime, it's
21 okay, we're just going to run you concurrent on the
22 existing crimes. We're giving people a message that it's
23 okay to them -- to get two for one.

24 This defendant was on probation for a Class 4
25 felony, Misconduct with Weapons. And while on probation

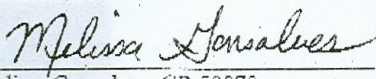
“ATTACHMENT H” – Page 1 of 2

State of Arizona)
County of Maricopa) ss.

I, MELISSA GONSALVES, of lawful age, being a Certified Reporter in and for the State of Arizona do state:

1. That I was asked by Elaine Cropper of Canyon State Reporting, Ltd., to prepare a transcription of proceedings held before a Maricopa County Superior Court judge in a civil matter recorded on August 9, 2005 via electronic recording;
2. That the CD containing the recorded proceedings held on August 9, 2005 did not contain certain cross-examination testimony of an expert called in those proceedings;
3. That the court’s minute entry in the case for that day states on page 3 in part: “1:04 p.m. Court reconvenes with respective counsel present. The proceedings are recorded electronically by CD and Videotape in lieu of a court reporter.” This is the same period of time where no witness testimony is found on the CD and this is indicated in the transcript by the parenthetical “(Testimony from 1:04 p.m. to 2:48 p.m. unavailable for transcription)”;
4. That I further reviewed the court’s minute entry and it does not indicate malfunctioning recording equipment;
5. That I called the attorney who ordered the transcription to seek permission to attach page 1768, of Volume IX, along with identifying title pages, to the public comment to be submitted to the Supreme Court by the Arizona Court Reporter’s Association on behalf of its members;
6. That permission was granted to publish page 1768 to the extent that any identifying information is redacted.
7. That I have caused to be placed on page 1768 of Volume IX of the trial transcript the parenthetical “(redacted)” in every instance where a party’s name appeared and said page is attached hereto.

SIGNED AND DATED this 11th day of May, 2006.


Melissa Gonsalves, CR 50070

“ATTACHMENT H” – Page 2 of 2

1768

1 A. No.

2 Q. Or how any of these percentages were derived, do
3 you?

4 A. Well, I was advised by counsel that (redacted)
5 and (redacted) had agreed contemporaneously to pay those
6 two percentages, but as to why, I don't know.

7 Q. You don't know whether the 9.7% takes into
8 consideration the numbers (redacted) had at risk in this
9 case?

10 A. I'm not even sure what your question means.

11 Q. Or the fact that (redacted) was uninsured for a
12 period of time when its insurer, (redacted), was bankrupt?

13 A. Again, I have no knowledge of that.

14 Q. And it doesn't take into the fact that (redacted)
15 admitted its share was actually 13%, does it?

16 A. I would have no knowledge of that.

17 MS. JONAS: This might be a good time to break,
18 your Honor.

19 THE COURT: Why don't we take our lunch break.

20 We'll be in recess until 1:00 today.

21 (Recess: 12:03 p.m. – 1:04 p.m.)

22 (Testimony from 1:04 p.m. to 2:48 p.m.

23 unavailable for transcription.)

24 THE COURT: Be seated, please.

25 Any redirect? I assume you have some.

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Let record show, court recordings are changing

Courthouses are switching from human stenographers to digital recording devices to save money, sometimes at the cost of accuracy

02/08/04

ROBIN FRANZEN

Court reporters, the fleet-fingered stenographers who served as the official scribes of the judicial process for decades, are disappearing as they are replaced by digital recording machines that create an audio record at far less cost.

These state-of-the-art machines have saved cash-strapped courthouses millions of dollars a year. But they have also caused headaches -- and legal quandaries -- in Oregon and across the country.

Sometimes the machines fail to record everything clearly, leaving typists unable to transcribe key testimony. At other times, the digital technology picks up things it shouldn't, such as the private conversations between lawyers and their clients.

Botched trial transcripts could pose serious problems, lawyers say. A defendant appealing a verdict needs a complete record of the case. Prosecutors fear flaws in the official record could lead to costly retrials. Defense attorneys fear the right to appeal could be jeopardized.

Last week, for example, about an hour of key prosecution testimony was discovered missing from a 2003 murder trial in Multnomah County. Someone forgot to turn on the machine. Although no one can say what will happen on appeal, senior deputy district attorney Jim McIntyre bristles at the thought of subjecting the victim's family to a retrial.

"It would be a tragedy for the family and the whole system if an appellate court were to reverse the entire case based solely upon a missing 55 minutes of one witness," he said.

In 2002, a complex civil environmental case had to be retried in Marion County because of a recording glitch, and the litigants planned to sue the state to recover costs. On Tuesday, the Court of Appeals granted a new trial for a Central Point man on the basis that a "substantial portion" of the oral record needed to appeal his driving-under-the-influence conviction had failed to record onto a CD.

"I just want justice," said Timothy Dunagan, the defendant. "I feel I got railroaded."

Variety of problems Oregon hasn't been keeping track of the problems caused by digital recordings, but sporadic examples illustrate what can happen.

Thirsty lawyers used to be able to pour a glass of water without thinking twice. But now those struggling to transcribe the record say pouring water near a live microphone sounds like Niagara Falls, obliterating testimony.

A lawyer who walks over to the jury to make a dramatic point now risks strolling right out of microphone range. Sometimes lawyers talk over one another, garbling the record in a way that can't always be deciphered. In Multnomah County, where wires in the old courthouse can act as radio antennas, a digital recorder picked up advice from "Dr. Laura" along with what was happening in court.

In addition to problems caused by gaps in the record, the same highly sensitive microphones are capable at other moments of picking up private conversations between defense lawyers and defendants. That means anyone can buy a \$10 copy of the public record on compact disc and eavesdrop on private lawyer-client conferences.

Public defender William Walsh said lawyers sometimes forget that the record is produced by a machine that may record their private conversations with clients.

"Even on the simplest misdemeanor case," he said, "you have so much to think about that the microphone on the table becomes innocuous and you ignore it."

Both are problems that Georgetown University law professor Paul Rothstein said are popping up in courtrooms all over the country as digital technology takes over, raising largely unanswered questions about the integrity of the record. Court reporters were preferable, he said, because everything said in court was "filtered through someone's brain." Private talk wasn't captured. Public talk was slowed down and clarified.

But if court reporters are too expensive, Rothstein said, states such as Oregon must iron out the digital kinks.

"I think it's all surmountable," Rothstein said, "but it's going to take a lot of effort."

Meanwhile, those who handle criminal appeals for indigent clients say missing words and phrases can compromise a defendant's ability to appeal.

"Gaps have been a problem for virtually every person in this office," said Walter Ledesma, a deputy public defender.

The stakes are particularly high in death penalty cases, which are routinely recorded in most counties. As Portland defense lawyer Richard L. Wolf put it in a 2002 letter to the court, "some of my clients' actual lives depend on the availability of an accurate and manageable court transcript."

More technology to come

Digital audio is just the leading edge of a technological revolution. Voice-activated cameras, systems allowing evidence to be televised throughout the courtroom, jury-box computer monitors and video conferencing are already being road-tested in a small number of "cyber-courts" across the country.

For the moment, however, Oregon is simply trying to gracefully enter the digital-audio age, with a large majority of the state's courtrooms using a system called FTR Gold (For the Record).

Steve Townsend, president of FTR Ltd., a company that has put digital recording systems in about 7,000 courtrooms worldwide since 1995, said his machines provide a good record at far lower cost. He said they have special features for easily retrieving and storing testimony and untangling conversations where more than one person speaks at once. Plus, the PC-based systems rarely crash, he said.

But Townsend isn't blindly enthusiastic. He acknowledges that machines can't record if no one turns them on.

"We've had instances where the clock froze and no one noticed for an hour." And it happens in well-run courthouses, he said, simply because administrators feel no choice but to dump the task of monitoring the machines onto court clerks who were already busy. It's the only way they can justify spending roughly \$7,000 per courtroom for recorders.

"Oregon is as financially strapped as anyone," Townsend said, "so clearly there's a desire to maximize the technology, sometimes to the detriment of the record."

Patricia Morgan, a self-employed transcriptionist based in Eagle Point, knows exactly what Townsend is talking about. She has listened to hours upon hours of digital audio -- it provides her with a steady income and the ability to work from home -- and she has struggled to make out testimony over the din of rustling paper, whirring fans and a strange "Martians-are-landing" noise that crops up every so often. She has even fired off e-mails to judges who can't keep control of their courtrooms.

But even so, she loves digital audio because it's so much better than previous generations of audio recording.

"And the technology makes it possible for a hearing held in Oregon to be transcribed in Alabama," she said.

Sen. Vicki Walker, a Democrat from Eugene who has worked as a court reporter for more than two decades, considers digital recordings a big step down from court reporter transcripts.

"I've gone through audio transcripts, and they're awful," she said. And when gaps

occur, "it's a tragedy," she said, "and it winds up costing taxpayers more in the long run."

Recording the most serious cases As a member of the Legislature's Joint Judiciary Committee, next year she will be part of a push to return court reporters to the judicial system, at least for the most serious cases. Oregon Chief Justice Wallace P. Carson Jr. agrees there's a need, but he said there's no money.

For the time being, the only record being made for the aggravated murder trial of Ladon Stephens in Multnomah County is electronic. Unless something changes, that's the plan for the forthcoming aggravated murder trial of Ward Weaver in Clackamas County. Both men are accused of killing teenage girls.

Norm Frink, Multnomah County's chief deputy district attorney, worries that gaps in the record of murder or aggravated murder cases could undermine convictions won by his office. If digital audio remains the only record for such cases, gaps and inaudible phrases are "the type of thing we are going to see more of," he said. "I think the courts really have to take a hard look at this."

Privately, some people fret that even a handful of big-ticket retrials could seriously cut into the cost-savings derived from digital audio.

But with the state in a budget crisis, it's unclear if court reporters, who made about \$65,000 a year in salary and benefits, will return anytime soon.

Last fall, Multnomah County Presiding Judge Dale Koch said, "I think we're at the end of an era." In his county alone, roughly \$750,000 is being saved in the first full year of digital audio, and in future years, managers expect to save at least that much.

"To most people, it seems like a pretty easy choice," said Bradd Swank, special counsel for government relations for the state court administrator. The state went from about 60 court reporters in 2002 to fewer than a dozen.

In the meantime, courts do what they can to protect the audio record: daily sound checks in every courtroom, spot-checks to make sure recorded information is being captured on disk and using backup servers to store second copies.

Price of justice Even so, some lawyers are concerned enough that they've hired their own court reporters for important civil and criminal cases, a change that shifts the costs from the state to the litigants. Thomas Calkins, convicted of burning down his Portland grocery last year, hired court reporters for his trial last year.

He did so for important reasons. If the audio recording of his trial had been spotty, it would have been his burden to show on appeal that he had done everything possible to re-create the missing events from the collective memories and notes of those present and that the missing portions were material to his case.

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Most of Oregon's criminal defendants can't afford to hire their own court reporters, however, creating an inequitable system.

"If you have the money, you can have the service," said Doug Bray, Multnomah County's trial court administrator. "But if you're an indigent client and it's an aggravated murder case, I don't think there's money to pay for it."

So, after the discovery of the missing murder-trial audio, Bray is rushing to begin additional training for court clerks. He's working to develop a technical solution that would ensure the recorder begins whenever court resumes. And he's trying to let lawyers know that they should have private conversations away from live mikes.

"This certainly has put everyone on alert," he said. "It's clear that there are still lessons to be learned."

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From "The Oregonian" newspaper.

Audio failure jeopardizes murder trial

Silent CD - A new system failed to record three days of James N. Classen's murder trial

Thursday, April 27, 2006

HOLLEY GILBERT

VANCOUVER -- The audio system recording the James N. Classen murder trial in Clark County Superior Court malfunctioned last week, leaving three days of proceedings without sound and defense attorneys conferring about whether to seek a new trial.

"This is a failure of technology," Judge John P. Wulle, whose courtroom switched to the CD recording system on Feb. 2, said Wednesday.

The computer-driven system appeared to be working during the trial's final three days, Wulle said. The problem was uncovered after another judge used the courtroom and found a CD of those proceedings lacked sound.

Classen was convicted Monday of first-degree murder in the Feb. 8, 2005, stabbing death of his estranged wife, EveAnn M. Classen, 56.

The audio problem was discussed in court Wednesday after the jury retired to deliberate on whether two aggravating circumstances -- EveAnn's particular vulnerability and her husband's alleged deliberate cruelty -- existed during the crime. Jurors returned two hours later, having decided there were no aggravating factors.

That means Classen, 60, will be sentenced within the standard range of 22 to 30 years in prison. A finding of aggravating circumstances would have allowed a longer term. Wulle set May 24 for sentencing.

While the jury deliberated, Jon J. McMullen, Classen's defense attorney, said he and his co-counsel, Todd Maybrown of Seattle, will talk with Classen to decide whether to ask for a new trial or take the issue to the Washington Court of Appeals.

Deputy Prosecutor Tony Golik said the lack of an audio record is an issue to be decided if the case is appealed. There are rules about reconstructing the record and there is case law, including a Clark County case, in which the appellate court, using a reconstructed record, upheld convictions.

Golik said the damaged record is not the type of issue that can force a mistrial.

Wulle asked the attorneys to report back to him on May 4, and said he then would set a date for a hearing on the missing audio, if one is needed.

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The portion of the record to be reconstructed could be less than originally thought, however. KGW TV, which covered much of the trial, agreed later Wednesday to provide the court with copies of its April 18-20 tapes.

Also, Maggie Holbrook, a forensic computer specialist with the Vancouver Police Department, will examine the computer to see whether the audio was recorded on the hard drive even though the "capture card" -- which converts analog information into digital information to be stored as a multimedia file -- did not translate the audio to the CD.

Jeff Amram, Superior Court administrator, said the failure was the first in the thousands of hours of recording since the system was installed in some of the courtrooms -- but not Wulle's -- during a 2003 remodeling.

The problem computer was a relatively new county-owned Dell that the information services department upgraded to match CD systems it bought from Jefferson Audio Visual Systems Inc. of Louisville, Ky., Amram said. The conversion included some Jefferson products, and was "more a matter of convenience" than an attempt to save money on a new computer, Amram said.

Wulle said that from now on, he will make two videotapes -- using the previous recording system -- to back up the computer CD recordings in major cases.

Jared Green, vice president of Jefferson Audio Visual, with which Clark County contracts for maintenance on their computers, said that because the computer was built by the county, it is not covered by his company's warranty.